

**ORIGINAL**Decision No. 54668

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation and suspension on the )  
 Commission's own motion of Schedule )  
 No. 9 of Sonoma Water & Irrigation )  
 Co., filed by Advice Letter No. 6. )

Case No. 5762

Edward D. Keil, for Sonoma Water & Irrigation Co.  
Roland H. Kruger and Scott Elder, for property  
 owners in Sobre Vista Acres Subdivision No. 1,  
 and E. John Kleines, of McEnerney & Jacobs,  
 for John R. and Josephine D. Hooker,  
 protestants.  
George F. Tinkler, for the Commission's staff.

O P I N I O N

The Commission, upon receipt of a protest by certain land-owners in the Sonoma Valley, suspended Schedule No. 9, filed by Sonoma Water & Irrigation Co. on April 20, 1956, and entered upon a hearing to determine the propriety of the rates therein proposed for special metered water service to Sobre Vista Mutual Water Company and to property presently owned by John R. and Josephine D. Hooker. (Calif. Pub. Util. Code, Sec. 455.)

A public hearing was held on July 24, 1956, at Sonoma before Examiner John M. Gregory. Motions to dismiss the case for lack of jurisdiction were made at the hearing by the protesting landowners whose properties lie in and adjacent to Sobre Vista Acres Subdivision No. 1. They assert, as against the utility, certain deeded water rights and easements with respect to the water which the utility here seeks, by the filing of its schedule, to subject to the Commission's regulatory authority over rates and service.

The motions, and the utility's objections thereto, were taken under submission on briefs, since filed, following receipt of evidence dealing generally with the nature of the claims asserted by the contending parties and with the status of certain litigation concerning such claims which has been pending in the Sonoma County Superior Court since 1953. (Anderson, et al. v. Sonoma Water & Irrigation Co., et al., No. 36607.)

Included by reference in the present record is the record of an application proceeding filed by the utility in 1952, by which it sought to extend its service area and rates to lands which embraced the properties of the present protestants, who also appeared in the former proceeding and objected to the extension there requested. The Commission, though denying the extension as requested by applicant, nevertheless authorized the company to serve the so-called "Preston Tract" and a few consumers who asserted contractual rights to service at rates to be fixed by the Commission. Those properties are not situated in the area in which the company now seeks to provide service under Schedule No. 9. (Application No. 33786, Decisions Nos. 48827 (Interim Order) and 49146, both rendered in 1953.) The record in that proceeding includes certain exhibits and other data bearing on the pending court litigation.

The position of the claimants to the deeded water rights and easements appears to be that such rights are interests in real property which are specifically stated to run with the land, and, as such, cannot be taken for public use by the Commission, or by any party acting under its orders, without violating constitutional

guarantees; that the utility, when it acquired the watershed, springs, and the gathering and storage facilities connected with such water, in 1951, did so with both actual and constructive notice of protestants' pre-existing rights and easements in and to said water, as set forth in their deeds; that the record is devoid of evidence that the water in question was ever dedicated to public use by the present landowners or their predecessors, prior or subsequent to the acquisition by the utility of the watershed lands and other facilities in 1951.

The utility, on the other hand, maintains that when it acquired the land, springs, gathering and storage facilities in 1951 and thereafter used said facilities, in connection with all of its properties, in serving the general public, including the Sobre Vista Mutual Water Company (the mutual company formed by the protesting landowners) and the Hookers, it did so as a public utility whose rates and service are subject to the regulatory authority of the Commission. The company also maintains that the filing of Schedule No. 9 was prompted by its endeavor to carry out the terms of a settlement of the pending court litigation, pursuant to a memorandum, dated January 25, 1956, which is in evidence and which purports to set forth the "intent", at that time, of the various parties concerned.

The undisputed facts of record disclose that the water involved in this proceeding has its source in three springs and a well located on approximately 400 acres of watershed land formerly comprising a portion of the Spreckels Ranch, in the western part of the Sonoma Valley. Sobre Vista Acres Subdivision No. 1 is located at the southern end of the old ranch properties.

The spring water is gathered in a collection box and conveyed through a pipe to an underground, covered, concrete, 75,000-gallon reservoir (sometimes referred to as a "90,000-gallon reservoir"). An auxiliary supply of water for this reservoir is obtained by the company from its well and 40 h.p. pump, known as Pumping Station No. 4, which are located on company land adjacent to the Hooker property. The springs, collection box, pipeline connections from the collection box and pumping plant to the reservoir, together with the reservoir itself, are owned by the utility company. The company also owns a 30,000-gallon, underground, concrete, covered reservoir located a short distance below the larger reservoir and connected with it by two company-owned pipelines. From this smaller reservoir proceed two pipelines, of 2-inch and 8-inch diameter, which are used by the company for the transmission and distribution of water to other consumers on its system.

Between the lower portion of the 75,000-gallon reservoir and a 4-inch meter owned and maintained by the company, there is a 4-inch pipeline approximately 200 feet in length. Legal title to this section of pipeline, which lies in land owned by the utility company, is in dispute between the utility and the protesting landowners. Beyond the meter lie the transmission and distribution pipelines used and maintained by members of the mutual water company for the ultimate delivery of water to their premises. Water is transported to the Hooker property through a separate metered connection to the 75,000-gallon reservoir.

There follows a brief review of the undisputed facts adduced by the contending parties in support of the derivation of their respective claims.

On March 10, 1950, and for some time prior thereto, both the watershed land, on which are located the springs, gathering facilities, well and 75,000-gallon reservoir, and the 113.6 acres of land which now comprises Sobre Vista Acres Subdivision No. 1, belonged to Richard J. and Elizabeth N. Dolwig. On that date the Dolwigs conveyed the 113.6 acres to C. B. and Elizabeth S. Carter. The deed was recorded in Sonoma County on March 21, 1950. Included in the deed was a grant of an easement and right to take from the existing wells and springs upon the land retained by the Dolwigs, called the servient tenement, water sufficient for all reasonable noncommercial uses on the granted tract, all such water to be delivered to the reservoir by and at the expense of the grantors and to be metered and conducted from the reservoir to the subdivision property, called the dominant tenement, at the grantees' expense and by pipes laid and maintained by grantees. The deed further provided that:

"Grantees shall pay unto grantors, as compensation for the delivery of such water to such reservoir, the sum of 10¢ for each 1,000 gallons delivered upon the dominant tenement, such sums payable monthly; provided that in no event shall the sum so payable be less than \$6.00 per month ....."

These are the rates which Sonoma Water & Irrigation Co. seeks to increase and subject to the Commission's jurisdiction by the suspended filing.

The Carters promptly subdivided the parcel of land, constructed the distribution system in the subdivision and installed the pipe, with the meter therein, extending from the reservoir to the subdivision. The protestants who own land in the subdivision acquired their property, including their asserted

water rights, from the Carters either directly or through intermediate grantees.

The Hookers assert title to two contiguous parcels of land, comprising approximately 25.93 acres, through two deeds from Oscar and Maude de Bretteville, dated September 20, 1948 and November 29, 1948, respectively, both of which were recorded in Sonoma County that year. By deed dated May 14, 1952, recorded in Sonoma County a few days later, Andrious A. and Rona M. Jones conveyed to the Hookers certain real property on which is situated a lake, known as the "Big Lake" or "Alma Lake", and containing 72.76 acres. The Hookers assert their water rights and water easements in the 75,000 and 30,000-gallon reservoirs and in connecting pipes and appliances, as appurtenant to their land, by virtue of the grant to them of such rights by the Dolwigs by deed dated July 14, 1948, and recorded in Sonoma County on March 6, 1952. The Hookers also maintain that their asserted water rights and easements were originally created and established both at common law and of record long before the utility company or the other protestants acquired any legal interest in the facilities in question.

On November 26, 1951, the Dolwigs conveyed the servient tenement mentioned in the Carters' deed to Sonoma Water & Irrigation Co. Protestants maintain that the repudiation by the company of their asserted water rights and water easements in the servient tenement led to the commencement of the pending litigation in the Sonoma County Superior Court by which they seek to establish and enforce such rights.

The position of the company, as we have stated, in substance is that it is a public utility which is engaged in rendering water service subject to the jurisdiction of and to

regulation by this Commission; that its facilities, including those acquired in 1951, for rendering such service are operated and maintained for the benefit of all its consumers, including Sobre Vista Mutual Water Company and the Hookers; that it may not render its service as a public utility otherwise than in accordance with its filed tariffs, or pursuant to authorized deviations therefrom; that the deeds which refer to the rate of 10 cents per 1,000 gallons for delivery of water from the 75,000-gallon reservoir are, in effect, contracts for service at rates other than those in its filed tariffs which have not received sanction from the Commission.

The sole issue with which we are concerned here is whether the Commission has power, in light of the facts of record, to set or approve a rate or charge for the rendition of whatever service is performed by the utility in transporting or delivering water through its facilities to the metered connections with Sobre Vista Mutual Water Company and the Hookers.

Protestants have referred us to a number of decisions by the Supreme Court of California tending to establish that their asserted rights constitute interests in real property, and that the Commission's rate-fixing jurisdiction cannot be exercised, in derogation of the rate fixed in their deeds, unless there has been a dedication to public use of the water and facilities in question.

The utility, in its memorandum, reiterates the position it assumed at the hearing, as has been indicated above.

There appears to be no question that, with the possible exception of the 200-odd foot segment of pipe connecting the 75,000-gallon reservoir and the distribution facilities of the protesting landowners, legal title to which is disputed, the utility, by virtue of the Carter deed in 1951, acquired title to the watershed

lands, springs, reservoirs and attached facilities in the Sobre Vista Hills area, and thereafter applied the water and the properties so acquired to the service of its consumers generally, including the members of the Sobre Vista Mutual Water Company and the Hookers.

Whether, in performing that service, or, as is contended by protestants, in merely providing the means by which they are enabled to receive their own water, the utility may disregard the rate provisions contained in the Dolwig deed and subject that rate to public authority, is the crucial question to be determined as far as the Commission may be concerned in this controversy.

We have concluded, on the record and arguments thus far advanced, that until the issues involved in the pending litigation between the utility and the protesting landowners have been determined, it would be inappropriate, if not futile, for this Commission to issue an order that might be considered by the courts to constitute an invasion of their judicial powers with respect to the interpretation and determination of contractual or other rights in and to real property.

Accordingly, we should and will permanently suspend Schedule No. 9, as filed by the utility on April 20, 1956. Should the utility and the protestants, however, pending settlement of their litigation, be willing to enter into, and submit to the Commission, an agreement respecting a rate or charge for the transportation or delivery of water by the utility to protestants' meters, such agreement being in the nature of a special contract deviating from the utility's filed tariffs, the Commission will consider such agreement and take appropriate action thereon.



ORDER

A public hearing having been held herein, evidence and argument having been received and considered, the matter having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that:

1. Schedule No. 9, filed by Sonoma Water & Irrigation Co. on April 20, 1956, be and it hereby is permanently suspended as of the date hereof. ✓

2. The investigation herein, instituted by order of the Commission dated May 8, 1956, be and it hereby is discontinued.

For all other purposes, the effective date of this order shall be twenty days after the date hereof. ✓

Dated at San Francisco, California, this 12<sup>th</sup> day of March, 1957.

Robert E. Mitchell  
President

Robert L. ...

...

R. Hardy

E. L. Fox  
Commissioners